May 25, 1955.

Honorable Harry E. Jackson
Deputy Secretary of State
Concord, New Hampshire

Dear Mr. Jackson:

You have inquired whether your office, upon receipt of an application for a trade name, should also compare the name offered with registered trade marks on file with your office. The answer is in the affirmative.

Revised Laws, chapter 186, section 10, providing for trade names prohibits the registration of trade names already registered or ". . . so similar thereto as to be liable to be mistaken for it. . ." unless written assents are obtained.

Trade marks are provided for by Laws of 1949, chapter 219, which in turn created a new chapter of the Revised Laws, chapter 207-A. The very purpose of the trade mark law is to protect property rights and to prevent deception of the public. The trade mark law provides for certificates of registration to be issued by you and is phrased in language directing you to refuse an application when a trade mark so nearly resembles another as to be "likely to cause confusion or mistake." It is provided in section 17 of chapter 207-A that all courts in this state shall construe the trade mark law ". . . in the most liberal manner for effecting the objects and purposes thereof. . ."

While there are two separate and distinct statutes covering these separate subjects, they are interrelated in the sense that a trade name as to mislead the public would obviously mislead the public in regard to trade marks upon a reciprocal basis. The holder of either a trade mark or a trade name is entitled to protection from infringement from similarity, which is unavoidable in either case. Such a conclusion is compelled by common law principles of unfair competition.

The words "Dairy Freeze" having been registered
by you as a trade mark would not permit a subsequent applicant to
register "Pal's Dairy Freeze" for the same reasons without the
permission of the trade mark holder in accordance with the statute.

Sincerely,

Louis C. Wyman
Attorney General

LCV/aml

cc: Council of State Governments